

February 14, 2003

In Re:

[Redacted]

Claimant

Claims Case No. 03021006

CLAIMS APPEALS BOARD DECISION

DIGEST

A former National Guard member received two duplicate payments of disability severance pay by direct deposit to her bank account. Waiver under 32 U.S.C. § 716 is precluded since the former member is partially at fault for receiving payments in excess of her entitlement without bringing the matter to the attention of the proper authorities. Because a reasonable person would verify her bank balance, stated lack of knowledge of the deposit does not provide a basis for waiver.

DECISION

This responds to an appeal of DOHA's Settlement Certificate, DOHA Claim No. 02092409, October 28, 2002, which denied the waiver request of a former National Guard member. The debt arose when she received an overpayment of disability severance pay in the amount of \$13,646.74.

Background

The record shows that the member, an E-5 with 12 years service, was separated from the Idaho National Guard on September 24, 2001, and was entitled to \$39,258.00 for disability severance pay. Because the reserve pay system would not accept a payment with more than six numerical characters, she received her severance pay in several smaller installments rather than as a lump-sum. When the member reported to her financial services office (FSO) that she had not received two of the payments which were supposed to be sent directly to her bank account, that office reissued the payments. The FSO later discovered that the member had actually received the two payments which were supposed to be missing, resulting in a total payment to her of \$58,516.02, and an overpayment of \$19,258.02. However, because the error was discovered before the end of the tax year in December 2001, the FSO was able to re-credit taxes for the erroneous payments in the amount of \$5,611.28. This reduced the overpayment to the member to \$13,646.74.

The member requested waiver of the \$13,646.74 debt based on her assertions that the overpayment was due to an administrative error on the part of the government and that she did not know the amount of severance pay she was entitled to receive. Written statements provided by the financial clerk and an officer at the FSO establish that the member was verbally advised at the outset as to the amount of severance pay she was entitled to receive. She was also notified expeditiously that an erroneous overpayment had occurred. Additionally, the FSO requested that the member provide it with copies of her bank statements showing that the two payments in question had not been directly deposited in her account as she had alleged. The member never provided the requested documentation.

In Settlement Certificate, DOHA Claim No. 02092409, dated October 28, 2002, our office denied waiver with respect to the \$13,646.74 debt.

Discussion

Under 32 U.S.C. § 716, we may waive a claim of the United States against a member or former member of the National Guard for erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States. Waiver cannot be granted if there exists any indication of fraud, fault, misrepresentation, or lack of good faith on the part of the member or former member. The standard we employ in determining whether a member was at fault in accepting an overpayment is whether, under the particular circumstances involved, a reasonable person would have been aware that she was receiving more than her entitlement. *See* DOHA Claims Case No. 98020428 (March 12, 1998), citing B-252672, Sept. 20, 1993, and B-257862, Jan. 17, 1995. In those cases, the members received an unexplained deposit to their bank accounts after discharge. Under such circumstances, a reasonable person would have been aware of the deposit to their account and therefore they were partially at fault when they received money to which they were not entitled without questioning it. Further, we are bound by the agency's version of the factual events absent clear and convincing contrary evidence from the member. *See* DOHA Claims Case No. 02092001, dated January 30, 2003, citing 57 Comp. Gen. 415, 419 (1978).

In the present situation, the member was advised at the outset by her FSO as to the amount of severance pay she was entitled to receive. The two erroneous payments were directly deposited to her bank account at her behest, and in response to her assertion that the original payments had not been received. The member was asked to provide the FSO with copies of her bank statements, so that it could verify that the required deposits had not been made. She never complied with that request. Under such circumstances, the member should have questioned her receipt of the duplicate payments. In the meantime, she did not acquire title to the questionable overpayments merely because the government made an administrative error, and should have held them until a final determination was made that they were hers or until the government asked for repayment. *See* DOHA Claims Case No. 99033117 (April 15, 1999), citing DOHA Claims Case No. 99012022 (March 11, 1999), *aff'd*, Deputy General Counsel (Fiscal), December 28, 2000. Since a reasonable person would have been aware of her correct bank balance and would therefore have been aware of the duplicate payments, the member is partially at fault in the matter, and waiver is precluded. *See* DOHA Claims Case No. 98020428, *supra*, citing B-252672, *supra*; and B-257862, *supra*.

Finally, while financial hardship alone does not provide a basis for waiver, the Defense Finance and Accounting Service (DFAS), at its own discretion, may arrange a repayment plan which takes any hardship appropriately into account. *See* DOHA Claims Case No. 02122602, (January 13, 2003), citing DOHA Claims Case No. 02072315 (September 17, 2002).

Conclusion

We affirm the Settlement Certificate.

_____/s/
Michael D. Hipple
Chairman, Claims Appeals Board

_____/s/
William S. Fields
Member, Claims Appeals Board

_____/s/
Catherine M. Engstrom
Member, Claims Appeals Board